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Nos. 71-789 and 71-796

In the Supreme Court of the United States

OCTOBER TERM, 1971

NORMAN JACOBS, PETITIONER

v.

UNITED STATES OF AMERICA

GEORGE KASTENBAUM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Southern District of Florida, petitioners were convicted of having conspired to violate the Hobbs Act, 18 U.S.C. 1951, by conspiring to obtain $50,000 through extortion. Petitioner Kastenbaum was additionally convicted of attempted extortion. Jacobs was sentenced to eighteen months' imprison-

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ment; Kastenbaum received concurrent prison terms of five and three years, respectively. The court of appeals affirmed (Pet. App. 1a–21a).

The facts of the case are set forth in some detail in the opinion of the court of appeals. Briefly, the evidence established that in December 1968, Raymond Casella sought to organize a night-club bus tour business in Miami Beach. He had difficulty finding a bus company which would rent him buses for the tour, and when he did find one (A–1 Bus Company), he was told by a police sergeant that he could not use the company because it did not have a proper permit (App. 62).[1] The police sergeant sent Casella to Jacobs, who agreed to supply him with taxi cabs for the tour but after the first night reneged, claiming that he was prevented from continuing because of a contract with another client (App. 62–63). Jacobs then sent Casella to Kastenbaum who told Casella he could get him a bus permit for $10,000 by bribing city councilmen (App. 67). Casella said he did not have that kind of money and the conversation ended. Casella was then able to arrange transportation with the Metro bus company (App. 68, 72) but his business was plagued with false reservations (App. 69).[2] Two weeks later Jacobs told Casella that he had "heard" that certain parties were going to "stop you from operating. * * * Metro isn't going to give you any buses" (App. 72). Shortly thereafter, Metro cancelled the contract. Casella then

[1] "App." refers to the Appellants' Appendix below.

[2] Also during this period Casella's cat was found on his doorstep, shot through the head (App. 68).

returned to Kastenbaum (App. 73). At first Kastenbaum said there was nothing he could do, but when he found out that Casella had financial backing,[3] he told Casella to see Jacobs (App. 74). Later Jacobs reported that he could arrange the permit for $50,000 to be placed in a safety deposit box for which Kastenbaum would be given the key (App. 77). At a subsequent meeting, it was arranged that the money would be deposited in a box for which Jacobs and Casella were each given a key (App. 94). On February 18, 1969, Kastenbaum met Jacobs and Casella. After Jacobs said the package had been delivered (App. 98), Kastenbaum discussed the application for a bus permit. Later, Kastenbaum told Casella that some of the people working with him wanted to retain 10% of the business and that they were insisting on this, with Kastenbaum to be trustee (App. 118, 131–132).[4]

1. Petitioners contend in effect that the proof of conspiracy to violate the Hobbs Act was insufficient since there was no threat or plan to threaten the victim; that the evidence showed at most a conspiracy to bribe or the demand for a high contingent legal fee. The evidence, however, clearly justified the inference drawn by the jury that petitioners, who knew of Casella's desperate financial situation, attempted to play upon his fears of economic loss to wring from him $50,000, and, in addition to get an interest in his

[3] The "financial backing" came from the F.B.I. whom Casella had contacted in the interim.

[4] The City Council approved Casella's application for a permit on March 5, 1969, but Casella never received it.

business. Kastenbaum's statement to Casella that it was impossible to get a permit "without a good attorney and a good fee" (App. 121) made it clear to Casella that he had no hope of success unless he met Kastenbaum's demands. This is extortion in common parlance and in legal definition. Unlike the situation in *United States* v. *Kubacki*, 237 F. Supp. 638 (E.D. Pa.), relied on by petitioners, the victim here (Casella) was not threatened merely with loss of a single contract, but with a total inability to do business in Miami Beach if he failed to pay Kastenbaum $50,000. See also *United States* v. *Addonizio*, 449 F. 2d 101 (C.A. 3), petition for a writ of certiorari pending (No. 71–744). The fact that petitioners couched their demands in terms of a bribe for others did not lessen the duress.

2. Since the issue at trial was whether petitioner preyed on Casella's fear of economic loss, the court properly excluded as irrelevant proffered testimony (App. 415–416) which allegedly would have shown that in October 1968, before the events here at issue, Casella had indicated to police sergeant Dresner that he would be willing to pay a bribe to get a permit to operate buses in Miami Beach. If the evidence had been admitted and were true, it would only have shown that Casella was in a position that made the subsequent extortion easier. Rather than broaden the trial to include this contestable allegation, the court was well within its discretion in rejecting testimony on this subject. The conviction in this case was fully reviewed by the court of appeals, on whose opinion

we primarily rely and presents no issue worthy of further review by this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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